

## Internal Revenue Service, Treasury

## § 301.7432-1

524 of the Bankruptcy Code only if the taxpayer is a prevailing party.

(b) *Prevailing party.* A taxpayer is a prevailing party for purposes of this section only if—

(1) The taxpayer satisfies the net worth and size limitations in paragraph (f) of § 301.7430-5;

(2) The taxpayer establishes that in connection with the collection of his or her federal tax an officer or employee of the Internal Revenue Service has willfully violated a provision of section 362 or 524 of the Bankruptcy Code; and

(3) The position of the Internal Revenue Service in the proceeding was not substantially justified.

(c) *Administrative proceeding.* For purposes of this section, an administrative proceeding is a proceeding related to an administrative claim presented to the Internal Revenue Service seeking relief from a violation of section 362 or 524 of the Bankruptcy Code by the Internal Revenue Service or recovery of damages from the Internal Revenue Service under § 301.7433-2(e).

(d) *Costs incurred after filing of bankruptcy petition.* Administrative costs may be recovered only if incurred on or after the date of filing of the bankruptcy petition that formed the basis for the stay on collection under Bankruptcy Code section 362 or the discharge injunction under Bankruptcy Code section 524, as the case might be.

(e) *Time for filing claim for administrative costs.* (1) For purposes of this section, the taxpayer must file a claim for administrative costs before the Internal Revenue Service not later than 90 days after the date the Internal Revenue Service mails to the taxpayer, or otherwise notifies the taxpayer of, the decision regarding the claim for relief from or damages relating to a violation of the collection stay or the discharge injunction.

(2) If the Internal Revenue Service denies the claim for administrative costs in whole or in part, the taxpayer must file a petition with the Bankruptcy Court for administrative costs no later than 90 days after the date on which the denial of the claim for administrative costs is mailed, or otherwise furnished, to the taxpayer. If the Internal Revenue Service does not re-

spond on the merits to a request by the taxpayer for an award of reasonable administrative costs within six months after such request is filed, the Internal Revenue Service's failure to respond may be considered by the taxpayer as a denial of an award of reasonable administrative costs.

(3) For purposes of paragraphs (e)(1) and (2) of this section, if the 90th day falls on a Saturday, Sunday, or a legal holiday, the 90-day period shall end on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. The term legal holiday means a legal holiday in the District of Columbia. If the request for costs is to be filed with the Internal Revenue Service at an office of the Internal Revenue Service located outside the District of Columbia, the term legal holiday also means a statewide legal holiday in the state where such office is located.

(f) *Effective date.* This section is applicable with respect to actions taken by the Internal Revenue Service after July 22, 1998.

[T.D. 9050, 68 FR 14320, Mar. 25, 2003]

### § 301.7432-1 Civil cause of action for failure to release a lien.

(a) *In general.* If any officer or employee of the Internal Revenue Service knowingly, or by reason of negligence, fails to release a lien on property of the taxpayer in accordance with section 6325 of the Internal Revenue Code, such taxpayer may bring a civil action for damages against the United States in federal district court. The total amount of damages recoverable is the sum of:

(1) The actual, direct economic damages sustained by the taxpayer which, but for the officer's or the employee's knowing or negligent failure to release the lien under section 6325, would not have been sustained; and

(2) Costs of the action.

The amount of actual, direct economic damages that are recoverable is reduced to the extent such damages reasonably could have been mitigated by the plaintiff. An action for damages filed in federal district court may not be maintained unless the taxpayer has filed an administrative claim pursuant to paragraph (f) of this section and has waited the period required under paragraph (e) of this section.

(b) *Finding of satisfaction or unenforceability.* For purposes of this section, a finding under section 6325(a)(1) that the

liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable is treated as made on the earlier of:

(1) The date on which the district director of the district in which the taxpayer currently resides or the district in which the lien was filed finds full satisfaction or legal unenforceability; or

(2) The date on which such district director receives a request for a certificate of release of lien in accordance with § 401.6325-1(f), together with any information which is reasonably necessary for the district director to conclude that the lien has been fully satisfied or is legally unenforceable.

(c) *Actual, direct economic damages—*

(1) *Definition.* Actual, direct economic damages are actual pecuniary damages sustained by the taxpayer that would not have been sustained but for an officer's or an employee's failure to release a lien in accordance with section 6325 of the Internal Revenue Code. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent that they result in actual pecuniary damages.

(2) *Litigation costs and administrative costs not recoverable.* Litigation costs and administrative costs described in this paragraph are not recoverable as actual, direct economic damages. Litigation costs may be recoverable under section 7430 (see paragraph (j) of this section) or, solely to the extent described in paragraph (d) of this section, as costs of the action.

(i) *Litigation costs.* For purposes of this paragraph, litigation costs are any costs incurred pursuing litigation for relief from the failure to release a lien, including costs incurred pursuing a civil action in federal district court under paragraph (a) of this section. Litigation costs include the following:

- (A) Court costs;
- (B) Expenses of expert witnesses in connection with a court proceeding;
- (C) Cost of any study, analysis, engineering report, test, or project prepared for a court proceeding; and
- (D) Fees paid or incurred for the services of attorneys, or other individuals authorized to practice before the court, in connection with a court proceeding.

(ii) *Administrative costs.* For purposes of this section, administrative costs are any costs incurred pursuing administrative relief from the failure to release a lien, including costs incurred pursuing an administrative claim for damages under paragraph (f) of this section. The term administrative costs includes:

(A) Any administrative fees or similar charges imposed by the Internal Revenue Service; and

(B) Expenses, costs, and fees described in paragraph (c)(2)(i) of this section incurred in pursuing administrative relief.

(d) *Costs of the action.* Costs of the action recoverable as damages under this section are limited to the following costs:

- (1) Fees of the clerk and marshal;
- (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and copies of paper necessarily obtained for use in the case;
- (5) Docket fees; and
- (6) Compensation of court appointed experts and interpreters.

(e) *No civil action in federal district court prior to filing an administrative claim—*(1) Except as provided in paragraph (e)(2) of this section, no action under paragraph (a) of this section shall be maintained in any federal district court before the earlier of the following dates:

(i) The date a decision is rendered on a claim filed in accordance with paragraph (f) of this section; or

(ii) The date 30 days after the date an administrative claim is filed in accordance with paragraph (f) of this section.

(2) If an administrative claim is filed in accordance with paragraph (f) of this section during the last 30 days of the period of limitations described in paragraph (i) of this section, the taxpayer may file an action in federal district court anytime after the administrative claim is filed and before the expiration of the period of limitations, without waiting for 30 days to expire or for a decision to be rendered on the claim.

(f) *Procedures for an administrative claim*—(1) *Manner*. An administrative claim for actual, direct economic damages as defined in paragraph (c) of this section shall be sent in writing to the district director (marked for the attention of the Chief, Special Procedures Function) in the district in which the taxpayer currently resides or the district in which the notice of federal tax lien was filed.

(2) *Form*. The administrative claim shall include:

(i) The name, current address, current home and work telephone numbers and any convenient times to be contacted, and taxpayer identification number of the taxpayer making the claim;

(ii) A copy of the notice of federal tax lien affecting the taxpayer's property, if available;

(iii) A copy of the request for release of lien made in accordance with § 401.6325-1(f) of the Code of Federal Regulations, if applicable;

(iv) The grounds, in reasonable detail, for the claim (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(v) A description of the injuries incurred by the taxpayer filing the claim (include copies of any available substantiating documentation or evidence);

(vi) The dollar amount of the claim, including any damages that have not yet been incurred but that are reasonably foreseeable (include copies of any available substantiating documentation or evidence); and

(vii) The signature of the taxpayer or duly authorized representative.

For purposes of this paragraph, a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer.

(g) *Notice of failure to release lien*—An administrative claim under paragraph (f) of this section shall be considered a notice of failure to release a lien.

(h) *No action in federal district court for any sum in excess of the dollar amount sought in the administrative claim*—No action for actual, direct economic damages under paragraph (a) of this section shall be instituted in federal district court for any sum in excess of the amount (already incurred and estimated) of the administrative claim filed under paragraph (f) of this section, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of the claim.

(i) *Period of limitations*—(1) *Time of filing*. A civil action under paragraph (a) of this section must be brought in federal district court within 2 years after the date the cause of action accrues.

(2) *Cause of action accrues*. A cause of action accrues when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(j) *Recovery of costs under section 7430*—Reasonable litigation costs, including attorney's fees, not recoverable under this section may be recoverable under section 7430. If following the Internal Revenue Service's denial of an administrative claim on the grounds that the Internal Revenue Service did not violate section 7432(a), a taxpayer brings a civil action for damages in a district court of the United States, and establishes entitlement to damages under this section, substantially prevails with respect to the amount of damages in controversy, and meets the requirements of section 7430(c)(4)(A)(iii) (relating to notice and net worth requirements), the taxpayer will be considered a "prevailing party" for purposes of section 7430. Such taxpayer, therefore, will generally be entitled to attorney's fees and other reasonable litigation costs not recoverable under this section. For purposes of the paragraph, if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within 30 days after the claim is filed, the Internal Revenue Service's failure to respond shall be considered a denial of the administrative claim on the grounds that the Internal Revenue

Service did not violate section 7432(a). Administrative costs, including attorney's fees incurred pursuing an administrative claim under paragraph (f) of this section, are not recoverable under section 7430.

(k) *Effective date*—This section applies with respect to civil actions under section 7432 filed in federal district court after January 30, 1992.

[T.D. 8393, 57 FR 3539, Jan. 30, 1992; 57 FR 6061, Feb. 19, 1992]

**§ 301.7433-1 Civil cause of action for certain unauthorized collection actions.**

(a) *In general.* If, in connection with the collection of a federal tax with respect to a taxpayer, an officer or an employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregards any provision of the Internal Revenue Code or any regulation promulgated under the Internal Revenue Code, such taxpayer may bring a civil action for damages against the United States in federal district court. The taxpayer has a duty to mitigate damages. The total amount of damages recoverable is the lesser of \$1,000,000 (\$100,000 in the case of negligence), or the sum of:

- (1) The actual, direct economic damages sustained as a proximate result of the reckless or intentional actions of the officer or employee; and
- (2) Costs of the action.

An action for damages filed in federal district court may not be maintained unless the taxpayer has filed an administrative claim pursuant to paragraph (e) of this section, and has waited for the period required under paragraph (d) of this section.

(b) *Actual, direct economic damages*—

(1) *Definition.* Actual, direct economic damages are actual pecuniary damages sustained by the taxpayer as the proximate result of the reckless or intentional, or negligent, actions of an officer or an employee of the Internal Revenue Service. Injuries such as inconvenience, emotional distress and loss of reputation are compensable only to the extent that they result in actual pecuniary damages.

(2) *Litigation costs and administrative costs not recoverable.* Litigation costs and administrative costs are not recover-

able as actual, direct economic damages. Litigation costs may be recoverable under section 7430 (*see* paragraph (h) of this section) or, solely to the extent described in paragraph (c) of this section, as costs of the action.

(i) *Litigation costs.* For purposes of this paragraph, litigation costs are any costs incurred pursuing litigation for relief from the action taken by the officer or employee of the Internal Revenue Service, including costs incurred pursuing a civil action in federal district court under paragraph (a) of this section. The term litigation costs includes the following:

- (A) Court costs;
- (B) Expenses of expert witnesses in connection with a court proceeding;
- (C) Cost of any study, analysis, engineering report, test, or project prepared for a court proceeding; and
- (D) Fees paid or incurred for the services of attorneys, or other individuals authorized to practice before the court, in connection with a court proceeding.

(ii) *Administrative costs.* For purposes of this section, administrative costs are any costs incurred pursuing administrative relief from the action taken by an officer or employee of the Internal Revenue Service, including costs incurred pursuing an administrative claim for damages under paragraph (e) of this section. The term administrative costs includes:

- (A) Any administrative fees or similar charges imposed by the Internal Revenue Service; and
- (B) Expenses, costs, and fees described in paragraph (b)(2)(i) of this section incurred pursuing administrative relief.

(c) *Costs of the action.* Costs of the action recoverable as damages under this section are limited to the following costs:

- (1) Fees of the clerk and marshal;
- (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and copies of paper necessarily obtained for use in the case;
- (5) Docket fees; and